

Date of decision: April 19,1996

For Approval and Signature:

The Hon'ble Mr.Justice N.J.Pandya

The Hon'ble Mr.Justice A.R.Dave

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or a..  
  
thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Mr.Rajni H.Mehta, L.A. for the appellant  
Mr.Sandip C.Shah, L.A. for the respondents  
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Coram: N.J.Pandya & A.R.Dave,JJ.  
April 19, 1996

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ORAL JUDGMENT (Per N.J.Pandya,J.)

The appeal has been filed by the original respondents nos.1,2 & 3 of Motor Accident Claim Petition No.13 of 1983 of Motor Accident Claim Tribunal (Aux.), Ahmedabad. Against the claim of Rs.4,55,000/-, by its judgment dated 20th September 1993, the learned Tribunal

Judge has awarded the sum of Rs.3,60,000/-. By filing the present appeal, the appellants have challenged the award both on the count of negligence as well as quantum.

2. The incident happened on 1-12-1982 at about 1.00 p.m. when the deceased was proceeding on his Luna towards north to south and the bus was coming from eastern side towards west i.e. Jawahar Chowk to Bhairavnath cross junction. When the deceased had practically come in the middle of the said intersection, the bus came from Jawahar chowk side and collided with the front right hand side bumper of the Luna of the deceased. As a result, Luna driver Ganshyambhai died on the spot.

3. Looking to the aforesaid description and material like FIR, panchnama as well as oral testimony produced before him, the learned Judge has come to the conclusion that it was the bus driver, who was solely responsible for the incident. We do not see any reason to interfere with the finding of the learned tribunal Judge. In an intersection when a vehicle is approaching, the driver thereof has to give way to the traffic from the right. That exactly was the position so far as deceased Luna Driver is concerned. For the bus driver, the Luna was coming from right hand side and therefore, he should have been allowed to cross the intersection. That apart; the Luna driver had entered the intersection and was in the middle when the bus came upon him. In our opinion, therefore, the aforesaid conclusion of the learned Judge cannot be faulted with.

4. Now comes the question of quantum. For this, one may look at the elaborate discussion contained in the judgment of the learned Judge more particularly dealing with the evidence led by the claimants as to the income of the deceased. Income-tax assessment particulars of the firm of Messrs Jalaram Tabaco Co. have been tabulated and there, it could be seen that for the income thus shown for 7 years 1970 to 1977, the average income works out to Rs.26,448/- rounded off to Rs.26,500/-.

5. Before the trial Court, an attempt was made to take the average income of last 3 years because the income was less during that period. However, relying upon the judgment of 17 GLR 910, the learned Judge has taken the entire period of 7 years, because as laid down in the aforesaid judgment of this Court, the income of a businessman has to be determined on long term basis to take care of the likely fluctuation in business earning.

6. The aforesaid approach of the learned Judge,

therefore, cannot be faulted with. On that basis, when the learned Judge has given 15 years multiplier, looking to the age of the deceased which was 31 years, the total amount towards economic loss given to the claimant is Rs.3,52,500/-.

7. No doubt, L.A. Mr.Mehta appearing for the appellant, has strongly urged that the aforesaid amount has been worked out on the basis of allowing personal expenditure of the deceased of a very meagre amount namely Rs.250/- per month.

8. So far as personal expenditure is concerned, it depends upon the income of an individual and it would also depend upon the habit and way of life. That apart, when he is a partner of a firm, as is well known, his need could have been taken care of by the expenditure account of the firm itself and therefore, in our opinion, the said sum of Rs.250/- per month as taken by the learned Judge for deduction under the head of personal expenses of the deceased, does not appear to be wrong. The said approach of the learned Judge having been found acceptable, in our opinion, there is hardly anything so far as grievance as to the quantum in the appeal is concerned.

9. In the result, the appeal is dismissed. The award of the Tribunal is confirmed.

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